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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tyler B Wilson,

10 Plaintiff,

11 v.

12 PartnerRe Ireland Insurance dac, a foreign
13 corporation,

14 Defendant.

No. CV-23-00738-PHX-DGC

ORDER

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16 Defendant PartnerRe Ireland Insurance removed this case from state court. Doc. 1.
17 Plaintiff Tyler Wilson has filed a motion to remand under 28 U.S.C. § 1447(c) and a request
18 for attorneys’ fees. Doc. 8. The motion is fully briefed and no party requests oral
19 argument. For reasons stated below, the Court will deny the motion.

20 **I. Background.**

21 Plaintiff, an Arizona resident, served as general counsel for Taronis Technologies,
22 Inc. and as chief financial officer for its subsidiary, Taronis Fuels (“Fuels”). Doc. 1-3 ¶¶ 1,
23 9-11. In August 2019, Plaintiff and Fuels entered into an indemnification agreement that
24 required Fuels to indemnify Plaintiff for expenses arising out of any legal claims,
25 investigations, or inquiries. *Id.* ¶ 16.

26 Defendant is an Irish corporation with its principal place of business in Dublin,
27 Ireland. Doc. 1 ¶ 6. Defendant provided directors and officers insurance (“the Policy”) to
28 Fuels from July 2020 to July 2021. Doc. 1-3 ¶¶ 12-13.

1 The Securities and Exchange Commission started a formal investigation of Taronis
 2 Technologies in August 2020, and began an investigation of Fuels in January 2021. *Id.*
 3 ¶¶ 17-18. In May 2021, Plaintiff retained legal counsel. *Id.* ¶ 19. Plaintiff sought
 4 indemnification from Fuels and insurance coverage from Defendant. *Id.* ¶ 20. Both denied
 5 his requests. *Id.* ¶¶ 23-25.

6 Plaintiff sued Fuels for his legal expenses and obtained a judgment. Doc. 8 at 2.
 7 Fuels then filed for bankruptcy. *Id.*

8 On March 30, 2023, Plaintiff filed this action in Maricopa County Superior Court.
 9 Doc. 1-1 at 2-8. He asserts claims against PartnerRe for breach of the Policy and insurance
 10 bad faith. Doc. 1-3, ¶¶ 28, 39-43. He seeks compensatory and punitive damages,
 11 attorneys' fees, and a declaratory judgment that the Policy covers certain legal costs.
 12 Doc. 1-3 at 8.

13 On April 28, 2023, Defendant removed the action to this Court. Doc. 1. Defendant
 14 asserts that the Court has subject matter jurisdiction under 28 U.S.C. § 1332 because the
 15 parties are diverse and the matter in controversy exceeds \$75,000. *Id.*

16 **II. Legal Standard.**

17 Under 28 U.S.C. § 1441(a), a civil case may be removed to the federal district court
 18 in the district where the action is pending if the district court had original jurisdiction. The
 19 removal statute is to be strictly construed against removal jurisdiction. *Syngenta Crop*
 20 *Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002); *Shamrock Oil & Gas Corp. v. Sheets*, 313
 21 U.S. 100, 108 (1941). The “strong presumption” against removal “means that the
 22 defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles,*
 23 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). But “a plaintiff seeking remand has the burden to
 24 prove that an express exception to removal exists.” *Luther v. Countrywide Home Loans*
 25 *Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008) (citations omitted). Federal jurisdiction
 26 must be rejected, and the case remanded to state court, “if there is any doubt as to the right
 27 of removal in the first instance.” *Gaus*, 980 F.2d at 566; *see* 28 U.S.C. § 1447(c).

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1 **III. Discussion.**

2 **A. The Insurance Policy Permits Removal.**

3 Plaintiff argues that the Court lacks jurisdiction based on the forum selection clause
4 in the Policy. Doc. 8 at 2-3. The clause provides:

5 Underwriters at the request of any of the Insureds will submit to the
6 jurisdiction of any court of competent jurisdiction within the United States
7 and will comply with all requirements necessary to give such court
8 jurisdiction. *Nothing in this Clause constitutes or should be understood to*
9 *constitute a waiver of Underwriters' rights . . . to remove an action to United*
10 *States District Court[.]*

11 Doc. 8-1 at 64 (emphasis added).

12 This clause clearly permits Defendant to remove this action to federal court. Courts
13 enforce forum selection clauses absent “extraordinary circumstances unrelated to the
14 convenience of the parties.” *Atlantic Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist.*
15 *of Texas*, 571 U.S. 49, 62 (2013). Plaintiff does not assert that the clause is unenforceable
16 or should be disregarded for extraordinary reasons. Removal of this case is permitted by
17 the Policy.

18 **B. The Direct Action Exception Does Not Destroy Diversity Jurisdiction.**

19 Diversity jurisdiction exists in cases between citizens of different states involving
20 claims greater than \$75,000. 28 U.S.C. § 1332(a). A corporation is “deemed a citizen of
21 its place of incorporation and the location of its principal place of business” whether
22 incorporated in a state within the United States or a foreign country. *Nike, Inc. v. Comercial*
23 *Iberica de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 990 (9th Cir. 1994) (citing 28 U.S.C.
24 § 1332(c)(1)).

25 Plaintiff is a citizen of Arizona. Doc. 1-3 ¶ 1. Defendant is an Irish corporation,
26 principally conducting its business in Dublin. Doc. 1-1 at 1; Doc. 1-4 at 3. Neither party
27 disputes that Plaintiff’s claims exceed \$75,000. Diversity jurisdiction therefore appears
28 proper on the face of the complaint and the notice of removal. Doc. 1.

 Plaintiff argues that diversity jurisdiction is improper under 28 U.S.C. § 1332(c)(1).
That provision provides that “in any direct action against the insurer of a policy . . . to

1 which action the insured is not joined as a party-defendant, such insurer shall be deemed a
 2 citizen of . . . every State and foreign state of which the insured is a citizen[.]” 28 U.S.C.
 3 § 1332(c)(1).

4 A “direct action” is a case “in which a party suffering injuries or damage for which
 5 another is legally responsible is entitled to bring suit against the other’s liability insurer
 6 without joining the insured or first obtaining a judgment against him.” *Searles v.*
 7 *Cincinnati Ins. Co.*, 998 F.2d 728, 729 (9th Cir. 1993) (quoting *Beckham v. Safeco Ins. Co.*
 8 *of Am.*, 691 F.2d 898, 901-02 (9th Cir. 1982)). “A suit by an insured against his or her own
 9 insurer is denominated a first-party action. The direct-action rule of Section 1332(c) does
 10 not apply to a first party action, whether the action is based on denial of coverage or bad-
 11 faith insurance practices.” *Camelback Props. Phoenix Ins. Co.*, No. 10 C 01467, 2010 WL
 12 2402929, at *2 (N.D. Ill. June 15, 2010) (quoting 15 Moore’s Federal Practice ¶ 102.58[4]
 13 (3d ed. 2009)).

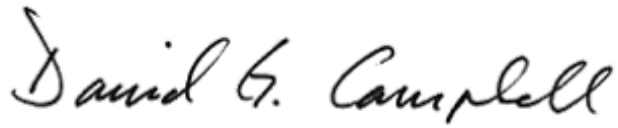
14 The Policy defines “insureds” as the Company and “all persons who were, now are,
 15 or shall be directors, officers or risk managers of the Company[.]” Doc. 1-3 at 49-50.
 16 Taronis Fuels, Inc. is listed as the Company. Doc. 1-3 at 10. Plaintiff was Fuels’ chief
 17 financial officer and acknowledges that he is thus an “insured” under the Policy. Doc. 1-3
 18 ¶¶ 11, 55. This case consists of an insured bringing an action against his insurer and is not
 19 a direct action. *See Searles*, 998 F.2d at 729 (“[A] suit by an insured against an insurer, is
 20 not a direct action.”) (cleaned up); *Bhattacharya v. HISCOX Ins. Co.*, No. CV-19-02780-
 21 PHX-ESW, 2019 WL 12288046, at *3 (D. Ariz. June 11, 2019) (collecting cases).

22 Plaintiff argues that he is suing PartnerRe for the wrongs and liability of Fuels,
 23 making this a direct action. But Plaintiff alleges that PartnerRe “breached the Policy by
 24 refusing coverage under the same” (Doc. 1-3 ¶ 28) and “violated applicable industry
 25 standards governing reasonable handling of D&O coverage claims” (*id.* ¶ 42). These
 26 claims for breach of the Policy and insurance bad faith could not be asserted against Fuels
 27 and cannot form the basis of a direct action. *See Beckham*, 691 F.2d at 902 (“The present
 28 suit is clearly not a direct action since Beckham is not seeking to impose liability on Safeco

1 for the negligence of Safeco's insured, Mankin. Rather, she is seeking to impose liability
2 on Safeco for its own tortious conduct, i.e., Safeco's bad faith refusal to settle her claim
3 against Mankin.") (citation omitted); *Purington v. GEICO Ins. Agency Inc.*, No. CV-19-
4 01469-PHX-SMB, 2019 WL 12338047, at *2 (D. Ariz. Oct. 10, 2019) ("[T]he "direct
5 action" exception does not apply because Plaintiff could not have brought a bad faith or
6 breach of contract claim based on Defendant's underinsured motorist policy against the
7 tortfeasor's insurer."); *Weigen v. Am. Fam. Mut. Ins. Co. SI*, No. CV-18-00470-TUC-JAS-
8 JMR, 2018 WL 6272776, at *3 (D. Ariz. Oct. 24, 2018) ("Here, Plaintiff's complaint
9 alleges a breach of contract and bad faith claim against his own insurer, American Family.
10 Those claims and this action could not be brought against Statler. Thus, the action is a not
11 a direct action.").

12 **IT IS ORDERED** that Plaintiff's motion to remand and request for attorneys' fees
13 (Doc. 8) is **denied**.

14 Dated this 5th day of June, 2023.

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18 David G. Campbell
19 Senior United States District Judge
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